

August 17, 2004 CPC



**STAFF'S  
REQUEST ANALYSIS  
AND  
RECOMMENDATION**

**04TW0392**

**Richard Wayne Brown**

**Clover Hill Magisterial District**

**In the northeast quadrant of the intersection of Boonesboro Drive and Boones Trail Road**

**REQUEST:** Development Standards Waiver to the Zoning Ordinance provision in Section 19-510(a)(1) to permit a boat to be parked in an area of the rear yard outside of the required rear yard. It should be noted that the request is a result of a complaint.

**RECOMMENDATION**

Staff recommends that Development Standards Waiver request be denied for the following reasons:

- A. The amount of slope on this property is not a detriment to complying with the location requirements.
- B. The requested location is visible from the street and may have a negative impact on the neighborhood.
- C. The applicant has not demonstrated a hardship other than economic to justify the retention of the boat in its current location.

**GENERAL INFORMATION**

**Applicant/Owner:**

**Richard Wayne Brown**

Location:

In the northeast quadrant of the intersection of Boonesboro Drive and Boones Trail Road, also known as Fernbrook, Lot 49, Taylor's Landing Section and 8830 Boones Trail Road. Tax ID 756-685-9739 (Sheet 11).

Existing Zoning and Land Use:

R-12; Single family residential

Size:

0.3 acre

Adjacent Zoning and Land Use:

North, South, East and West - R-12 - Single family residential

BACKGROUND

The property owner is requesting permission to retain the boat parking in a rear yard location outside of the required rear yard because there is slope. The applicant has submitted information to address the requirements of Section 19-19 regarding granting a Development Standards Waiver. (Attachment 1)

The applicant stated that the boat is parked in a newly constructed parking pad directly adjacent to the house. When the parking pad was constructed the elevation of the area was raised approximately two and one half (2-1/2) feet by means of a retaining wall. If the area had not been raised then there would not be a slope issue. The boat appears to have been parked in the same location behind the home in the driveway for at least a year prior to the department receiving a complaint. The applicant does not believe the boat as parked is impairing the property values. Staff notes that because the applicant lives on a corner lot that the location required by the Ordinance will be visible from a street. (Attachment 3)

The Ordinance requires a boat to be parked in the rear yard (behind the house) at least five (5) feet from a side lot line and ten (10) feet from the rear lot line. After the property owner reviewed the situation with Zoning Enforcement staff, it was concluded that a possible means to correct the violation would be by obtaining a Development Standards Waiver.

CONCLUSIONS

Staff believes that based upon the investigation of the property, there is not a physical hardship that would require the boat to be parked on the parking pad adjacent to the house rather than the required rear yard location. Staff further believes that approval of this request would be detrimental to the neighborhood and set precedence for approving other requests for parking boats and recreational vehicles in nonpermitted yard areas.

## ATTACHMENT 2

### REQUIRED FINDINGS – Section 19-19

The Planning Commission may grant a Development Standards Waiver to development standards or requirements specified in the Zoning Ordinance if it is determined to be in substantial compliance with all of the following factors:

- (1) By reason of the exceptional narrowness, shallowness, size or shape of the specific piece of property or by reason of exceptional topographic conditions or other exceptional situation or condition relating to such property the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property.
- (2) The granting of the modification will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience, and the hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (3) The modification will not be injurious to the use and enjoyment of adjacent property owners; will not diminish or impair property values within the neighborhood; will not change the character of the district; and will not be detrimental to or endanger the public health, safety or general welfare.
- (4) The condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.
- (5) The granting of such modification will allow the project to comply with the Comprehensive Plan.

The Planning Commission shall not grant a modification to any development standard or requirement if:

- (1) The granting of the modification will constitute the granting of a variance, special exception, conditional use or a rezoning.
- (2) Ordinary financial considerations are the principal reason for the requested modification.
- (3) The modification amends a property-specific condition imposed by the Board of Supervisors or the Board of Zoning Appeals, unless such condition specifically grants such modification authority to the Planning Commission.

- (4) The applicant created the condition or situation generating the need for the modification and the applicant has not exhausted all other practicable solutions to the problem, including, but not limited to, the acquisition of additional property, the elimination or redesign of structures, or the reduction of development density.

1. EXTREME SLOPE OF THE ENTIRE PROPERTY MAKES IT IMPOSSIBLE TO PARK THE BOAT ANYWHERE OUTSIDE OF THE DRIVEWAY. I SPENT \$6500 FOR A CEMENT DRIVEWAY SO I COULD MAKE THE DRIVEWAY USEABLE TO PARK MY CARS IN. IT IS 22 FEET WIDE AND HAS A 2 1/4 DROPOFF. THE HOUSE HAS A BASEMENT, WHICH IS COMPLETELY UNDER THE GROUND AT ONE END AND COMPLETELY OUT OF THE GROUND AT THE OTHER.
2. I WILL HAVE TO PAY FOR BOAT STORAGE IF NOT ALLOWED TO PARK THE BOAT IN MY DRIVEWAY. THIS CAN GET VERY EXPENSIVE AND CAUSE A FINANCIAL HARDSHIP THAT I SHOULD NOT HAVE TO WORRY ABOUT. GENERALLY OTHER PROPERTIES IN MY NEIGHBORHOOD AND AREA DO NOT HAVE THE EXTREME SLOPE PROBLEM.
3. THERE IS NO SAFETY OR WELFARE ISSUE INVOLVED IN THIS REQUEST. OTHER PROPERTY OWNERS HAVE RECREATIONAL VEHICLES IN THE AREA AND ARE ALLOWED IN THE ZONING REGULATIONS AND THEREFORE THIS MODIFICATION WOULD NOT AFFECT PROPERTY VALUES OR CHARACTER OF THE DISTRICT. THE BOAT IS ONLY VISIBLE BY ONE HOUSE, THIS IS THE HOUSE TO THE RIGHT AND "BEHIND" ME, AND THE BOAT WOULD BE VISIBLE ALSO IF IT WAS CAPABLE OF BEING STORED IN THE REAR OF THE PROPERTY. THEY HAVE STATED THEY HAVE NO PROBLEM WHERE IT IS AND PREFER THIS TO THE BACKYARD. THERE ARE WOODS ON THE LEFT SIDE OF MY PROPERTY WHICH BLOCKS THE VIEW. I ALSO RESTATE THAT R.V.S ARE ALLREADY ALLOWED IT WOULD ONLY BE STORED IN A DIFFERENT LOCATION THAN THE REAR.
4. THIS EXTREME SLOPE IS NOT GENERALLY SHARED BY THE PROPERTIES IN THE AREA I LIVE.
5. THE GRANTING OF THE MODIFICATION WILL ALLOW COMPLIANCE OF ALL ZONING AND PLANS. THIS WILL COMPLY WITH THE COMPREHENSIVE PLAN WHICH ALLREADY ALLOWS RECREATIONAL VEHICLES.

**AN ORDINANCE TO AMEND THE CODE OF THE COUNTY  
OF CHESTERFIELD, 1978, AS AMENDED, BY AMENDING  
AND REENACTING SECTION 19-19 RELATING TO  
MODIFICATIONS TO DEVELOPMENT STANDARDS AND REQUIREMENTS**

**BE IT ORDAINED** by the Board of Supervisors of Chesterfield County:

- (1) *That Section 19-19 of the Code of the County of Chesterfield, 1978, as amended, is amended and reenacted to read as follows:*

Sec. 19-19. Planning commission may grant modifications to development standards and requirements.

(a) Except for those development standards or requirements which must be modified by the granting of a variance, special exception, conditional use or a rezoning, the planning commission may grant modifications, with or without conditions, to development standards or requirements specified in this chapter. The planning commission shall fix a reasonable time for the hearing of an application under this section and decide the same within 60 days after its first hearing on the matter, unless the applicant requests or consents to action beyond such time or unless the applicant withdraws the request.

(b) No modification to a development standard or requirement shall be authorized by the planning commission unless it considers and determines substantial compliance with all of the following factors:

- (1) By reason of the exceptional narrowness, shallowness, size or shape of the specific piece of property or nearby properties or by reason of exceptional topographic conditions or other exceptional situation or condition relating to such properties the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property.
- (2) The granting of the modification will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience, and the hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (3) The modification will not be injurious to the use and enjoyment of adjacent property owners; will not diminish or impair property values within the neighborhood; will not change the character of the district; and will not be detrimental to or endanger the public health, safety or general welfare.
- (4) The condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.

- (5) The granting of such modification will allow the project to comply with the comprehensive plan.

(c) In authorizing a modification, the planning commission may impose conditions regarding the location, character and other features of the proposed building, structure or use as it may deem necessary to the public interest; and it may require a guarantee or bond to remain in effect until compliance with such conditions has occurred.

(d) The planning commission shall not grant more than the minimum necessary modification to the appropriate development standard or requirement to resolve the hardship. The planning commission shall not grant a permanent modification to a standard or requirement if a temporary modification will suffice. A temporary modification may be granted if the planning commission determines that permanent compliance will be obtained in a future phase of development.

(e) The planning commission shall not grant a modification to any development standard or requirement if:

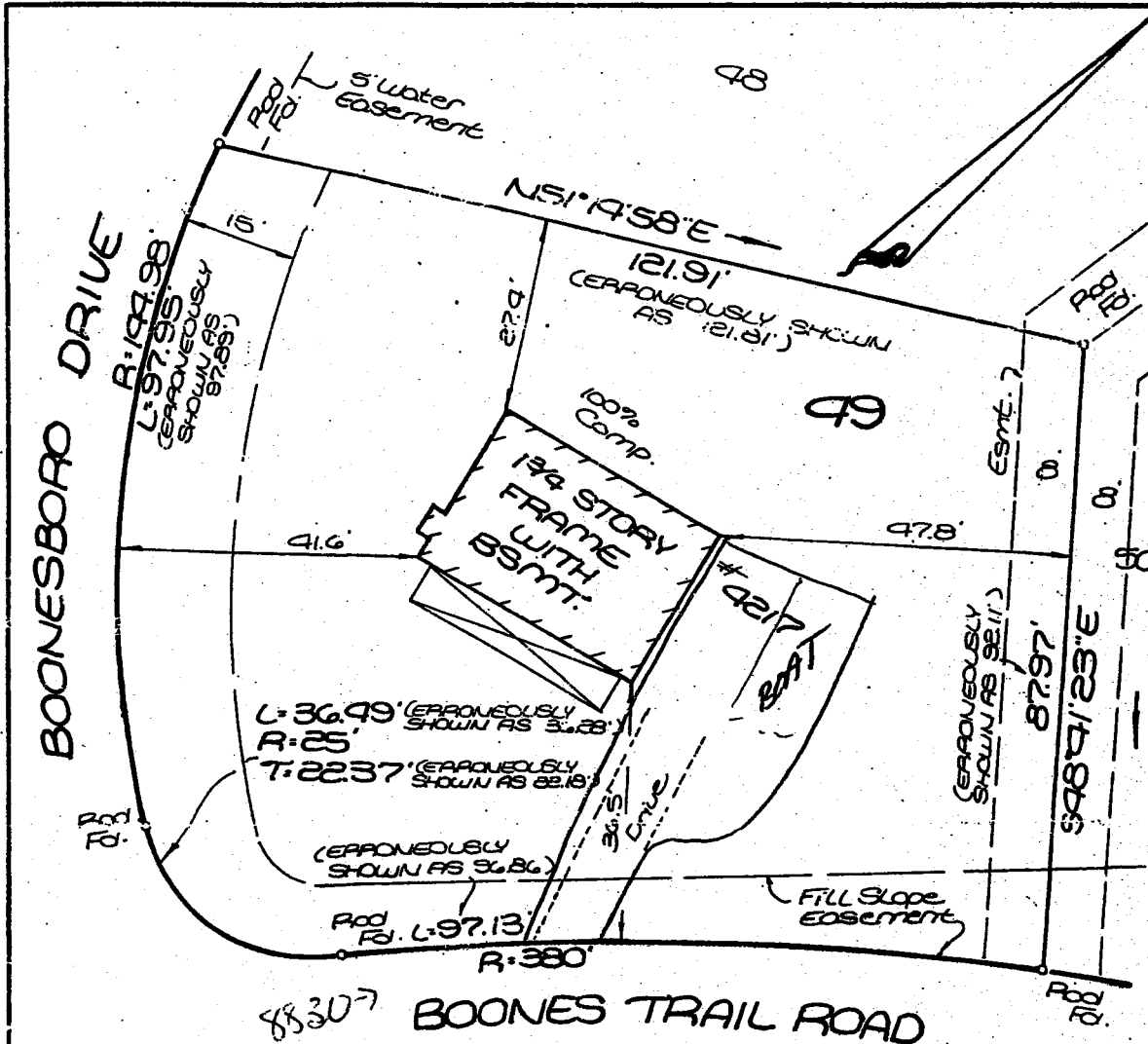
- (1) The granting of the modification will constitute the granting of a variance, special exception, conditional use or a rezoning.
- (2) Ordinary financial considerations are the principal reason for the requested modification.
- (3) The modification amends a property-specific condition imposed by the board of supervisors or the board of zoning appeals, unless such condition specifically grants such modification authority to the planning commission.
- (4) The applicant created the condition or situation generating the need for the modification and the applicant has not exhausted all other practicable solutions to the problem, including, but not limited to, the acquisition of additional property, the elimination or redesign of structures, or the reduction of development density.

(f) If the applicant disagrees with the planning commission's final decision, he may file a written appeal with the circuit court within 60 days of that decision. In addition, adjacent property owners may appeal the planning commission's final decision by filing a written appeal with the circuit court within 60 days of that decision. Adjacent property owners' appeals shall be limited to conditions which directly affect the property owners and include access, utility locations, buffers, conditions of zoning, architectural treatment and land use transitions. The court shall fix a reasonable time for hearing the appeal. During the appeal, the director of planning shall not approve any applicable site plan, building permit or record plat for any construction that would or could be affected by the appeal.

(Code 1978, § 21.1-12.1; Ord of 6-12-96, § 1)

THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND THEREFORE DOES NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

NOTE: THIS PROPERTY IS LOCATED IN  
ZONE C AS SHOWN ON FEMA  
COMMUNITY PANEL NO. 510035-0052 B

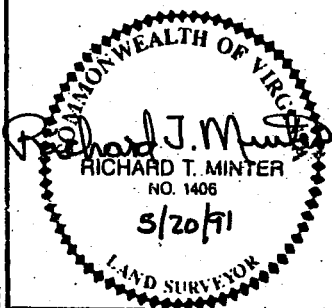


Purchaser:  
Richard W. Brown.

Note: Power and  
Telephone Services  
Underground.

PLAT SHOWING IMPROVEMENTS  
ON LOT 49, BLOCK "H", PLAN OF  
"FERNBROOK", "TAYLOR'S LANDING"  
SECTION, PHASE "II", IN THE  
CLOVER HILL DISTRICT OF  
CHESTERFIELD COUNTY, VIRGINIA.

This is to certify that on MAY 20, 1991 I made an accurate  
Field Survey of the premises shown hereon; that all improvements and easements known or visible are  
shown hereon; that there are no encroachments by improvements either from adjoining premises or  
from subject premises upon adjoining premises, other than as shown hereon.

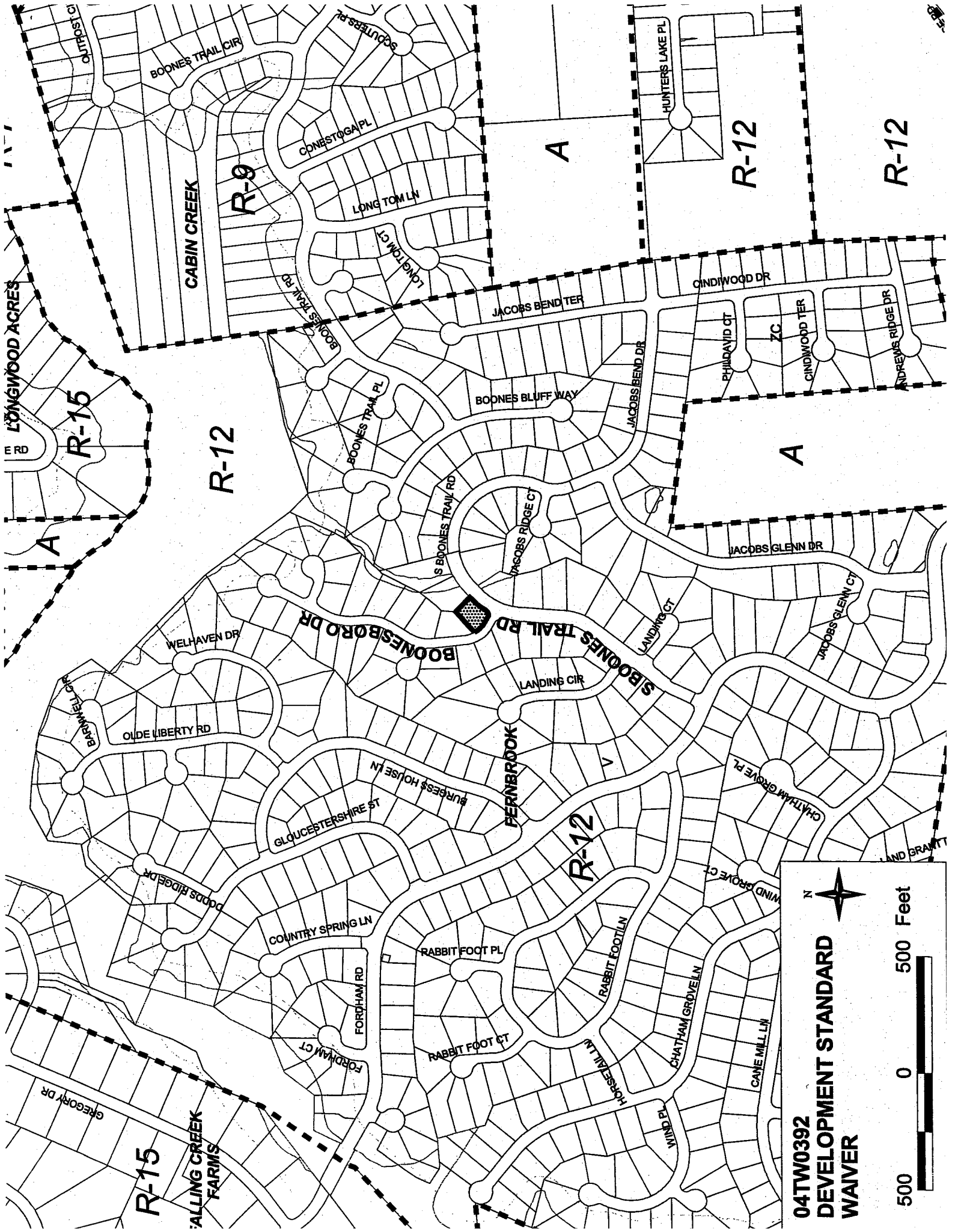


POTTS, MINTER AND ASSOCIATES, P.C.  
ENGINEERS, LAND SURVEYORS  
LAND PLANNERS

3520 S. Courthouse Road Suite 8 Richmond, Virginia 23236

Date: MAY 20, 1991  
Scale: 1" = 20'  
J.N. 8912-27

04 TWO 392-1



**04TW0392  
DEVELOPMENT STANDARD  
WAIVER**

N

500 0 500 Feet